TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 501.

THE WASHINGTON, ALEXANDRIA AND GEORGETOWN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

CATHARINE BROWN.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 8, 1871.

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2 *The answer of the chief justice and justices of the supreme court of the District of Columbia within named.*

The record and proceedings whereof mention is within made, follow in these words, to wit:

Declaration.—Filed M'ch 4, 1868.

In the supreme court of the District of Columbia this 4th day of March, 1868.

CATHARINE BROWN
v.
THE WASHINGTON, ALEXANDRIA AND GEORGETOWN Railroad Company. } At law. No. 4582.

The plaintiff complains of the above named defendants, the Washington, Alexandria and Georgetown Railroad Company, and says:

3 That the said defendants are a corporation duly organized under the laws of the State of Virginia and of the United States, and doing business in the District of Columbia and in the State of Virginia.

That the said defendants are engaged as common carriers of passengers by railroad for hire, among other points from and to the city of Washington in the District of Columbia, and from and to the city of Alexandria in the State of Virginia, upon their cars, drawn by locomotive engines, and were engaged as such common carriers as aforesaid, on and before the 8th day of February, 1868, and still are so engaged.

That, on or about the 8th day of February, 1868, the plaintiff paid for and procured from said company in Washington, in the District of Columbia, one of the tickets commonly called a railroad ticket from Washington, in said District, to Alexandria, in Virginia, and return, by which she was entitled in law and justice to enter into the pas-

4 senger cars of said defendants at the said city of Washington, and be conveyed by said company on its road to Alexandria aforesaid, and to enter a car of said defendants at said Alexandria and be returned thereon to Washington aforesaid by said company; that, in fact she was so conveyed from Washington to Alexandria on or about the day aforesaid, and on said ticket; and that intending to return on said cars to said Washington, as in justice and right she was entitled to do, by virtue of her money paid as aforesaid, and said ticket then in in her possession, she entered a car of said company at Alexandria aforesaid, and was seated in one of said cars of the road of said defendants for the purpose of returning as aforesaid, and was in fact a passenger on said car and of said road.

That, while legally and justly on the car of the defendants as aforesaid for the purpose of being carried from said Alexandria to said Washington as aforesaid, the said defendants, without any lawful cause, with great force and violence, at the said city of Alexandria,

5 ejected and turned her, this plaintiff, out of and from said car, and then and there declined and refused to carry her on said car over said road, as she had the right to be carried and transported, whereby she was greatly injured in person and in feelings, and was for a long time, and still is, confined and unable to attend to her ordinary business, and was compelled to employ a physician, and to remain a long time, and still is, under his treatment, and was obliged to and did

pay large sums of money for doctoring and attendance, to the damage of this plaintiff in the sum of twenty thousand dollars.

And the plaintiff further complains of the said defendants, and says: That the said defendants are a corporation, duly organized under the laws of the United States and of the State of Virginia, and doing business in the District of Columbia.

That the said defendants, at the date hereinafter mentioned, and for a long time prior thereto were, and still are, engaged as common
6 carriers of passengers by railroad, for hire, from Alexandria in the State of Virginia to Washington, in the District of Columbia, and from said Washington to said Alexandria, upon their cars, drawn by locomotive engines.

That, on or about the 8th day of February, 1868, at Alexandria, aforesaid, this plaintiff entered into one of the passenger cars of the said defendants for the purpose of being transferred and carried by said defendants from said Alexandria, to said Washington, and then and there became and was a passenger on board the said cars of said defendants.

That while legally and justly on the car of said defendants, as such passenger, for the purpose aforesaid, the said defendants, without any lawful cause, with great force and violence, at the said city of Alexandria, assaulted this plaintiff and ejected and turned her out of and from said car, and then and there declined and refused to carry or transport her over said road of said defendants, as she had a right to be carried and transported; whereby she was greatly injured in her person
7 and feelings, and was for a long time kept and detained from her ordinary business, and occupation, and was for a long time, and still is, from the injuries received at the hands of the defendants as aforesaid, sick, confined, and unable to attend to her ordinary business; and was compelled to employ a physician and to remain for a long time under his treatment, and still does so remain; and was obliged to and did pay large sums of money for doctoring and attendance, to the damage of this plaintiff in the sum of twenty thousand dollars.

Wherefore the plaintiff demands judgment against said defendants for the sum of twenty thousand dollars, with her costs of this suit.

GEORGE BURGESS AND S. R. BOND,
Plaintiff's Att'ys.

The defendants are to plead hereto on or before the first special term of the court, occurring twenty days after service hereof; otherwise
8 judgment.

GEORGE BURGESS AND S. R. BOND,
Attorneys for Plaintiff.

Summons.

In the supreme court of the District of Columbia, the 4th day of March, 1868.

CATHARINE BROWN, PLAINTIFF,
v.
THE WASHINGTON, ALEXANDRIA & GEORGETOWN Railroad Company, defendant. } At law. No. 4582.

The President of the United States to the marshal for said District greeting:

Summon the defendant in the above-entitled case to appear in said court, on or before the first special term thereof occurring twenty days

after service of this writ, and answer the declaration herewith served; and warn him that, on default of so doing, the plaintiff may proceed to judgment and execution at the trial term of said court next
9 after said service: And do you return this writ into the clerk's office immediately after service, so indorsed as to show the time and manner of executing it; and if you cannot serve it within six months, the day of its issuance exclusive, then return it into said office for renewal.

Witness D. K. Cartter, chief justice of said court.

[SEAL OF COURT.] R. J. MEIGS, *Clerk.*

BURGESS & BOND.

NOTE.—That the special terms of the court commence on the first Tuesday of every month except May, in which month they commence on the third Monday, and August, in which month there is no term of the court; and that the trial terms of the court commence on the first Tuesday of February, third Monday of May, and first Tuesday of November, when final judgments may be taken and execution awarded.

On back:

Served copy of sum's and dec's on John Stone, chief clerk of J.
10 H. Lathrop, receiver of the company appointed by the court, also chief clerk to Phelps & Stevens, lessees of the company, at their principal office in the city of Washington, D. C., he being the chief clerk in attendance at the office; and, upon diligent inquiry, I could find no other officer purporting to be the officer of the company.

March 7, 1868.

D. S. GOODING, *Marshal.*

Served copy of summons and dec'l'n on John Stone at a railroad office on Maryland avenue, bet. 8 & 9 sts, west, on the Island, the said Stone being then and there in attendance at said railroad office counting money. Also at the same time and place served copy of summons and decl. on Oscar A. Stevens.

May 28, 1868.

D. S. GOODING, *Marshal.*

Served copy of sum's and declaration on Jos. B. Stewart, reputed to be one of the directors of the company, the def't.

July 6, 1868.

D. S. GOODING, *Marshal.*

11 *Proceedings of court.*

Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court, commencing the third Monday of May, 1868.

MONDAY, *May* 18, 1868.

By order of Mr. Justice Fisher, presiding, the court is opened, by proclimation of the marshal.

TUESDAY, *October* 13, 1868.

Session resumed pursuant to adjournment—Fisher, justice, presiding.

CATHARINE BROWN, PL'FF,
vs.
THE WASHINGTON, ALEXANDRIA & GEORGETOWN Railroad Co., def't. } At law. No. 4582.

The plaintiff, by her attorneys, Messrs. Burgess & Bond, prays judgment of her damages against the defendant, which though served with

copies of the declaration, notice to plead, and summons, March 2,
12 May 28, and July 6, 1868, has not pleaded to the action: Therefore, because the plaintiff ought to have judgment of her said damages, but what those damages are is unknown to the court, it is ordered that the same be ascertained by the inquisition of a jury.

Motion to set aside judgment.—Filed Oct. 24, 1868.

In the supeme court of the District of Columbia.

CATHARINE BROWN
vs.
THE WASHINGTON, ALEXANDRIA & GEORGETOWN Railroad Co. } At law. No. 4582.

The above defendant moves the court to set aside the judgment in above case because no sufficient service of process has been had in the said case, as will appear by reference to the marshal's return.
Octo. 16, 1868.

R. J. BRENT,
R. T. MERRICK,
For Def't.

13 SATURDAY, *Octo.* 24, 1868.

Session resumed pursuant to adjournment—Fisher, justice, presiding.

CATHARINE BROWN, PL'FF
v.
THE WASHINGTON, ALEXANDRIA & GEORGETOWN Railroad Co., def't. } At law. No. 4582.

Ordered that the aforesaid motion be heard in the first instance in the general term.

Proceedings in general term.

Proceedings before the supreme court of the District of Columbia, in general term, commencing on the third Monday, 19th day of October, 1868.

MONDAY, *October* 19, 1868.

Term commenced by proclamation by the marshal, by order of the court—present, Chief Justice Cartter, and justices Olin, Fisher, and Wylie.

14 SATURDAY, *November* 7, 1868.

Session resumed pursuant to adjournment—present, Chief Justice Cartter, and justices Olin, Fisher, and Wylie.

CATHARINE BROWN, PL'FF,
v.
THE WASHINGTON, ALEXANDRIA & *Washington* Railroad Company, def't. } At law. No. 4582.

The defendant's aforesaid motion to set aside the judgment by default aforesaid, is overruled, upon argument thereof by the attorneys of the

parties respectively, and it is ordered that Jedediah Lathrop, defendant's receiver, do cause his appearance on behalf of the defendant to be entered in this action, within the next ten days; also that the defendant may enter its appearance herein within the same time; and upon the appearance of the defendant by the receiver being entered the said judgment is to stand set aside, and the cause is to be placed on the
15 trial calendar of the circuit court now sitting, and to stand thereon for trial.

Plea.—Filed Feb. 25, 1869.

In the supreme court of the District of Columbia.

W., A. & G. R. R. *ats.* BROWN. } At law. No. 4582.

The defendant says that it is not guilty.

SAM'L L. PHILLIPS,
Att'y for Receiver.

Joinder of issue.—Filed Oct. 28, 1869.

In the supreme court of the District of Columbia.

CATHARINE BROWN, PL'FF, *v.* THE WASHINGTON, ALEXANDRIA & GEORGETOWN Railroad Co., def't. } At law. No. 4582.

The plaintiff joins issue on defendant's plea.

16 GEORGE BURGESS,
S. R. BOND,
Att'ys for Plaintiff.

Proceedings of court.

Proceedings before the supreme court of the District of Columbia, holding a circuit court and special term, commencing the 4th Monday, 24th day of January, 1870.

MONDAY, *January* 24, 1870.

Session commenced pursuant to the rule of court—Cartter, chief justice, presiding.

MONDAY, *March* 21, 1871.

Session resumed pursuant to adjournment, Cartter, chief justice, presiding.

CATHARINE BROWN, PL'FF, *v.* THE WASHINGTON, ALEXANDRIA & GEORGETOWN Railroad Co., def't. } At law. No. 4582. Cal. 138.

17 And now come as well the plaintiff as the defendant, by their respective attorneys, and a jury of good and lawful men of this

district, to wit, Patrick Murry, T. D. Daley, George W. Huguely, John Byng, John Coulson, Robert J. Nicholson, D. G. Mallory, John L. Kervand, John Scrivener, Edward A. Dickens, Louis F. Whitney, and Samuel T. Tune, who, being sworn to try the issue above joined, are respited till the meeting of the court to-morrow.

TUESDAY, *March* 22, 1870.

Session resumed pursuant to adjournment—Cartter, chief justice, presiding.

CATHARINE BROWN, PL'FF,
v.
THE WASHINGTON, ALEXANDRIA & GEORGETOWN Railroad Co., def't. } At law. No. 4582. Cal. 138.

And now again come here as well the plaintiff as the defendant, and tho same jury who were respited yesterday; and the said jury is again respited till the meeting of the court to-morrow.

18 WEDNESDAY, *March* 23, 1870.

Session resumed pursuant to adjournment—Cartter, chief justice, presiding.

CATHARINE BROWN, PL'FF,
v.
THE WASHINGTON, ALEXANDRIA & GEORGETOWN Railroad Co., def't. } At law. No. 4582. Cal. 138.

And now again come here as well the plaintiff as the defendant, and the same jury who were respited yesterday; and the said jury is again respited till the meeting of the court to-morrow.

THURSDAY, *March* 24, 1870.

Session resumed pursuant to adjournment—Cartter, chief justice, presiding.

CATHARINE BROWN, PL'FF,
v.
THE WASHINGTON, ALEXANDRIA & GEORGETOWN Railroad Co., def't. } At law. No. 4582. Cal. 138.

19 And now again come here as well the plaintiff as the defendant, and the same jury who were respited yesterday; and the said jury is again respited till the meeting of the court to-morrow.

FRIDAY, *March* 25, 1870.

Session resumed pursuant to adjournment—Cartter, chief justice, presiding.

CATHARINE BROWN, PL'FF,
v.
THE WASHINGTON, ALEXANDRIA & GEORGETOWN Railroad Co., def't. } At law. No. 4582. Cal. 138.

And now again come here as well the plaintiff as the defendant, by their respective attorneys, and the same jury who were respited yes-

terday, and who, having received the instructions of the court, retire to consider of their verdict, and, returning into court, upon their oath say they find the issue above joined in favor of the plaintiff, and that the damages by her sustained by reason of the grievances in the
20 declaration complained of, is the sum of fifteen hundred dollars, besides costs.

And, thereupon, the defendant, by its attorney, Mr. Merrick, gives notice that he will move for a new trial.

SATURDAY, *April* 23, 1870.

Session resumed pursuant to adjournment—Cartter, chief justice, presiding.

CATHARINE BROWN, PL'FF, *v.* THE WASHINGTON, ALEXANDRIA & GEORGETOWN Railroad Co., def't. } At law. No. 4582. Cal. 138.

The defendant, by its attorneys, comes here now and prays that its bill of exceptions to the rulings of the court upon the trial, be signed, sealed, and made part of the record; and it is done accordingly.

Motion for new trial.

In the supreme court of the District of Columbia.

21 CATHARINE BROWN *v.* THE W., A. & G. R. R. Co. } At law. No. 4582.

And now comes the defendant, by his attorneys, and moves the court for a new trial on exceptions filed.

MERRICK & PHILLIPS,
Att'ys for Def't.

Bill of exceptions.

In the supreme court of the District of Columbia.

CATHARINE BROWN, PLAINTIFF, *v.* WASH., ALEX. & GEO. R. R., DEFENDANT. } At law. No. 4582.

On the trial of this case before the jury the evidence was given tending to show that, on the 8th day of February, 1868, the plaintiff, a colored person, purchased a ticket at the depot of the railroad office on Maryland avenue, in the city of Washington, D. C., for the sum
22 of twenty-five cents, to go to Alexandria, Va., from said city, and to return. After the purchase of the ticket the plaintiff went to take one of the cars, when some one behind said, "Take the other car." She paid no attention to the remark, but entered the car and was carried to Alexandria; that the car the plaintiff entered was the last car of the train, and was called the ladies' car, and was set apart exclusively for white ladies and gentlemen with white ladies; that, on the same day, the plaintiff, in the city of Alexandria, State of Virginia, having in her possession the portion of said ticket which en-

titled her to return to the city of Washington, entered the last car of the train for that purpose, and after she had entered the same a man stationed at the depot, whose duty it was to direct passengers to cars and see they entered therein, and who was employed by Stephens and Phelps, lessees of said road within the State of Verginia, and paid jointly by lessees and the receiver; that the said lessees also acted
23 as superintendent and manager within the District of Columbia, under appointment from J. D. Lathrop, the receiver of said road within the said District; that the said man stationed as aforesaid to direct passengers, informed the plaintiff she could not ride in that car, but she should take the forward car, that he had been instructed by the persons in charge of the road not to permit colored persons to ride in that car, but that there was another car for them; that the plaintiff refused to leave the car she had entered, whereupon the man attempted to put her out by great force and violence, with insults and indignities; and on the part of the defendant evidence was given tending to show that no more force was used than sufficient to put her out, and no unnecessary violence or force was used, and no insults or indignities were offered the plaintiff; that the said man finally, after calling assistance, succeeded in putting the plaintiff off the car.

Evidence was given by plaintiff tending to show that the man
24 who ejected her told her that "no damned niggers should ride in that car; that they never had and never should;" and that, in ejecting her from the car he wrenched her wrist, struck her over the eye, and kicked her, and dragged her down on the pavement and left her there. And on the part of the defendant evidence was given tending to show that no such expressions as those last above mentioned were made use of by the individual ejecting plaintiff, nor was she subjected to the violence also last above mentioned.

And on cross-examination of the plaintiff evidence was further given tending to show that if the man who ejected the plaintiff had told the plaintiff that both cars were alike, and had asked her to go into the other car without saying "damned niggers" were not allowed to ride in that car, the plaintiff declares that she would have gone therein; but when he told the plaintiff that was the objection, the plaintiff
25 determined to go therein. The plaintiff afterwards, with the assistance of a friend who approached her, entered another car on the same train, and was safely carried to Washington.

That there were three cars on said trains, all made at the same time, substancially alike and equally safe and comfortable; but evidence on the part of the plaintiff was offered tending to show that in the car she was compelled to ride there was smoking and spitting, and was not as clean or comfortable to her. There was a regulation that the first car going from Washington to Alexandria was used for colored persons, and the last car for white ladies, as aforesaid; when in returning to Washington from Alexandria, the first car going down carrying colored persons became the last car coming up, and was used for white ladies; and the last car going to Alexandria carrying white ladies became the first car coming back, and was used for colored persons.

26 That the portion of said railroad within the District of Columbia was in the possession and under the control of J. H. Lathrop, esq., a receiver appointed by the supreme court of the District of Columbia, in equity causes Nos. 757 and 773, wherein Davison et al. were complainants, and the Washington, Alex. and Geo'town R. R. Co. were defendants, as follows:

DAVISON AND OTHERS *v.* WASHINGTON, ALEXANDRIA AND GEORGETOWN R. R. Co. and others.	No. 757. Equity docket, No. 8.
THE WASHINGTON, ALEXANDRIA AND GEORGETOWN R. R. Co. and others *v.* D. RANDOLPH MARTIN & OTHERS.	No. 773. Equity doc., No. 8.

These several causes coming on to be heard on motions made in each of them respectively for an injunction and appointment of receiver, and by consent of counsel were argued together, on the bills, supplemental bills, answers, and other evidence and exhibits filed therein, and
27 the said several motions having been duly considered by the court, it is hereby, this 2d day of January, 1867, ordered and directed by the court, that J. H. Lathrop, esq., of the city of Washington, be, and is hereby, appointed a receiver, with full power and authority to ask for, demand, and take possession of the corporate seal of the said company; also of all the books, stock-books, deeds, leases, and all other documents and papers of whatever kind or description belonging to said company, or any of the officers thereof as such; also, of the railroad bed, the rolling-stock, the depots, and all other property, whither real or personal, belonging to said railroad company, or appointment to the said road.

That he thereupon shall proceed to operate said road according to his best discretion for the benefit of all parties having an interest therein.

That after reserving in hand a sufficient sum to pay the salaries
28 or wages of the persons whom he may find it necessary to employ in operating said road, and for meeting other expenses attendant upon the same, he shall make deposit, from time to time, of the surplus in his hands in some responsible bank or banking-house in the city of Washington, to the credit of these suits, and shall once every month, or oftener, if so required by the court, present to the court his account as receiver as aforesaid, verified by his own affidavit, and such other vouchers as may be lawfully required.

But, before entering upon the discharge of his said functions, the said J. H. Lathrop shall first file his bond in a penalty of fifty thousand dollars, with security to be approved by the court, or one of the justices thereof, conditioned for the faithful discharge of his duties as such receiver.

And it is further ordered and enjoined that each and all of the
29 above-named defendants do surrender up and deliver to the said J. H. Lathrop, receiver as aforesaid, on demand, all the books, papers, property, &c., of the said company, of which the said receiver has been authorised, as aforesaid, to take and have the possession; and are further ordered and enjoined not to exercise or attempt to exercise any authority, control, management, or direction over the organization, or the election of officers for the said company, or over the affairs of said company, or the property thereof, until the further order of the court.

By order of the court.

And that portion of the road within the State of Virginia was in the possession of Messrs. Stevens & Phelps, as lessees, under the following lease, to wit:

30 [Revenue stamp, canceled.]

This indenture of lease, made this fifth day of May, A. D. 1866, by and between the Washington, Alexandria, and Georgetown Railroad Company, by and with the advice, consent, and approval of the board of directors, by R. W. Latham, the president of said company, of the first part, and Oscar A. Stevens and W. Jackson Phelps, parties of the second part, witnesseth that, whereas the said party of the first part are the owners of a certain line of railroad, and its several branches, running from the city of Washington, in the District of Columbia, to the city of Alexandria, in the State of Virginia; and, with a view to the more successful and economical management and practicable working of its said railroad aforesaid, and to the end of providing for and paying the interest falling due from time to time on its bonded debt of three hundred thousand dollars, payable in twenty years from the first day of June, A. D. 1863; and for the purpose of providing a yearly sinking fund of seven thousand five hundred dollars, to be placed on interest
31 and to be appropriated and used towards the payment and liquidation of the said bonded debt of three hundred thousand dollars aforesaid; and for the further purpose of more securely insuring a dividend upon the capital stock of said company, the said party of the first part, through and by their legal representatives, have consented and agreed to lease, and do hereby lease to the said Oscar A. Stephens and W. Jackson Phelps, parties of the second part, for the term of ten years from the date hereof, their said railroad, and everything appertaining and belonging to the same, upon the following terms and conditions, viz:

ARTICLE I. The said parties of the second part agree to pay the interest on the bonded debt of three hundred thousand dollars of coupon-bonds, being of the aggregate of twenty-one thousand dollars per annum, payable semi-annually at the Metropolitan Bank, in the city of New York, on the first days of December and June of each and every year during the pendency of this lease.

32 ARTICLE II. The said parties of the second part agree to provide and pay annually the further sum of seven thousand five hundred dollars, to be invested and kept on interest as a sinking fund, and to be applied in liquidation and paying the principal of the said three hundred thousand dollars of bonded debt when due, and the same shall be deposited in some good savings' bank, at interest, or invested in some good and safe securities of either the United States or the city of New York, or on bond and mortgage in the cities of New York, Boston, Philadelphia, or Washington; and the said interest, as it may accumulate, shall be re-invested in like manner as the principal, and be appropriated and applied towards liquidating and paying said bonded debt aforesaid.

ARTICLE III. The said parties of the second part also agree to pay to the said party of the first part the sum of fifty per centum of the gross earnings or gross receipts, payable annually, at
33 the end of each and every year of said railroad during the term of said lease; and, as herein provided, shall be paid after first deducting from said fifty per centum the twenty-one thousand dollars required to be paid by the parties of the second part, and as stipulated and provided shall be paid in article first; and the further deduction from said fifty per centum of seven thousand five hundred dollars required to be paid by the parties of the second part, and as stipulated and provided shall be paid in article second; and the payment, on the part of the parties of the second part, of the said fifty per centum

per annum of the gross earnings or gross receipts, hereby specified to be paid by the parties of the second part to the said "The Washington, Alexandria, and Georgetown Railroad Company," shall be held and considered by the parties hereto as a full and complete payment and compliance with the terms and conditions of this lease on the part of the parties of the second part.

34 ARTICLE IV. The said parties of the second part may make, or cause to be made, all repairs which they may deem requisite and necessary for the better practical working operations of said railroad, or its branches, either by the use of materials or property hereby leased, or by a sale of the same for the purposes of said repairs or improvements, first having obtained the consent of the said railroad company to a sale of said materials or property for the purposes indicated; and the said parties of the second part are to keep the said railroad and its branches, bridge or bridges, turnouts, side-tracks, turntables, and all other property hereby leased, in good order and repair in all respects, accidents by fire, navigation, and the elements only excepted.

ARTICLE V. The said parties of the second part shall furnish and pay for all future rolling stock which they may require and desire in connection with the working operation of said railroad, after

35 the payment and completion of the contract on the part of the said "The Washington, Alexandria and Georgetown Railroad Company," for that heretofore purchased and contracted for with Messrs. Grice & Long, of Philadelphia, Pa., and which it is mutually understood and agreed shall be paid for by the said railroad company, or its legal representatives, according to said contract, dated February 24, 1866, and, upon its delivery by the said Messers. Grice & Long, as contracted and agreed upon, it shall become the property of the parties of the second part hereto, for the purposes indicated, and according to the true intent and meaning of this lease.

ARTICLE VI. The said parties of the second part shall keep good, sober, industrious, and competent men in the management and practical working operations of said railroad hereby leased. They shall pay, at their own proper costs and charges, all damages arising from accidents by and through the negligence of their employees, and they shall save the said railroad company harmless in this respect.

36 ARTICLE VII. The said parties of the second part shall build, or cause to be built, under and by direction of the board of directors of the said railroad company, or its legal representatives, and as may be required by plans and specifications by them furnished for such purpose to the said parties of the second part, a good first-class depot, on Maryland avenue, as required by the ordinance passed by the corporation of Washington, and at such place as the said railroad company, or its legal representatives, may provide for such purpose. They shall also build, or cause to be built, under and by direction of the board of directors of the said railroad company, or its legal representatives, and as may be required, by plans and specifications to be by them furnished for such purpose to the said parties of the second part, a local depot on Sixth street west, and at such place as the said railroad company, or its legal representatives, may provide for such purpose. They shall also build, or cause to be built, under and by direction of the board

37 of directors of the said railroad company, or its legal representatives, and as may be required by plans and specifications to be by them furnished for such purpose to the parties of the second part, a local depot on St. Asaph street, in the city of Alexandria, Va., on such place

as the said railroad company, or its legal representatives, may provide for such purpose. The cost, however, of the construction and building of the said several depot buildings hereby required to be constructed and built, shall be chargeable as a debit against the said railroad company, and the same shall be deducted from the per centum to be paid by the parties of the second part hereto; and it is expressly understood that the said parties of the second part shall not, unless they consent so to do, be required or expected to expend or pay, in the erection and completion of said several depot buildings hereby required to be built, a sum of money, during any one year, in excess of the annual per centum agreed to be paid by the parties of the second part,
38 or in excess of that which may annually be found due and justly belonging to the said parties of the first part, under and by virtue of this lease.

ARTICLE VIII. The parties of the second part shall pay, or cause to be paid, all Government, State, or city taxes of a general nature, required to be paid by the said railroad company during the said term of ten years or during the pendency of this lease.

ARTICLE IX. The parties of the second part shall observe and fulfill the contracts heretofore made and entered into on the part of the said railroad company, party of the first part, with the Adams Express Company, and with the Alexandria and Fredericksburg and Richmond, Fredericksburg and Potomac railroad companies; and the said railroad company reserve the right to make such further modifications in said contracts, or either of them, as shall or may become requisite from unforeseen contingencies, to make them more legally effective, according to the true intent and spirit of the same; and it is expressly
39 agreed and understood between the parties hereto, that whatever sum or dividend shall or may be derived by the said railroad company, or its legal representatives, under and by virtue of said contract or agreement with the said The Adams Express Company shall be chargeable monthly or yearly, as the same may accrue and become due by the terms of said contract, as a debit against the said railroad company aforesaid, or its legal representatives, and the same shall be deducted from the annual dividend or per centum to be paid by the parties of the second part, but said sum of money so to be charged as a debit against the said railroad company, shall not exceed the sum of seven thousand dollars per year, during the term of this lease, and all sums of money in excess of said seven thousand dollars per annum shall also be treated as a portion of the earnings or receipts of said railroad under this lease, and the same shall be paid to the said parties of the second part by the said The Adams Express Company,
40. and be disposed of as hereinbefore provided for a disposition of the earnings and receipts of said railroad.

And it is witnessed hereby that, in consideration of the premises and in consideration of the performance of the conditions and covenants therein, on the part of the party of the second part, the said The Washington, Alexandria, and Georgetown Railroad Company, party of the first part, agree and covenant to, and hereby do grant to, the said Oscar A. Stevens and W. Jackson Phelps, parties of the second part, or to their legal representatives or assigns, complete and uninterrupted use and control of the said railroad, including all branches, property, estate, real or personal, belonging to or in any wise appertaining to the said railroad company, or its legal representatives, including all its buildings, depots, engine-houses, tank-houses, offices, engines, rolling stock, works of all kinds and nature, rights of way as now secured and those

contracted for and contemplated to be secured; switches, side-tracks, turn-outs, turn-tables, bridge or bridges, hand-cars, trucks, iron
41 of all kinds, lumber, nails, chains, spikes, ties, or materials and stores of all and every kind and nature now on hand and belonging to said railroad company, with the right to use, control, enjoy, and employ the same at any and all times, including office, engine-house, tank-house, or depot furniture, safes, books, blanks, stationery, tickets, or materials and fixtures of any kind belonging to the said railroad company, except as hereinafter stated, for the full end and term of ten years from the fifth day of May, A. D. 1866, and to terminate and fully end on the fifth day of May, A. D. 1876.

The said railroad company or its legal representatives shall construct or cause to be constructed the extention or branch of said railroad from the intersection of Maryland avenue and Sixth street, across the canal, at the earliest practical moment; or, if constructed by the parties of the second part, it shall be deducted from the annual dividend or per centum to be paid by the parties of the second part; and all improve-
42 ments of a permanent character, and which may be deemed necessary, and are constructed accordingly by the parties of the second part, such as extending and laying new tracks, swi'ches, or turntables, or improvements of any kind which become the permanent property of the said railroad company, or its legal representatives, shall, in the first instance, be charged to said party of the first part; but, after the same is constructed and fully completed, the same shall be kept in good repair at the expense and cost of the said parties of the second part.

The said party of the first part shall acquire and pay for all rights of way now or hereafter acquired, and which may be deemed necessary for the better practical working operations of the road.

But the said The Washington, Alexandria and Georgetown Railroad Company reserve the right to sell and dispose of any real estate that may not be necessary to the working operations of the said road,
43 and any and all additional real estate which may be deemed necessary shall be purchased and paid for by the party of the first part.

And the said party of the first part shall take from the said parties of the second part all rolling stock and other materials and fixtures which may be acquired by said parties of the second part for said road during the term of this lease, at its expiration, or whenever the same shall terminate between the parties hereto, and pay therefor such price or sum as may be adjudged by competent and disinterested appraisers, whose decision shall be final.

And the party of the first part shall also pay, or cause to be paid, the instalment of interest which falls due on the first day of June, 1866, the same being the interest then due and payable upon the bonded debt hereinbefore mentioned.

It is also agreed, and speci'lly covenanted, that, if the parties of the second part shall fail*ed* to pay the semi-annual interest on said
44 bonded debt of three hundred thousand dollars aforesaid for thirty days after maturity of the same, to wit, on the first days of December and June of each and every year during the pendency of this lease, or shall fail to pay or deposit the seven thousand five hundred dollars as a sinking fund aforesaid for thirty days from and after the first day of June, 1867, or for thirty days after the first day of June in any succeeding year during the pendency of this lease, or shall for sixty days fail to pay the dividend or per centum hereinbefore mentioned,

after the same shall have become due and payable under and by the terms aforesaid, after deducting such portion as is properly chargeable to the party of the first part, then, and in that case and event only, shall this lease cease and become null and void; otherwise to remain in full force and effect.

In witness whereof the said The Washington, Alexandria and Georgetown Railroad Company, party of the first part, have caused to be hereunto affixed their corporate or common seal, duly attested
45 by their secretary, and the signature of its president, and the said Oscar A. Stevens and W. Jackson Phelps, parties of the second part, have affixed their hands and seals this fifth day of May, A. D. 1866.

R. W. LATHAM, [L. S.]
President of the Washington, Alexandria and Georgetown R. R. Company.
JOS. B. STEWART, [L. S.]
Secretary of the Washington, Alexandria and Georgetown R. R. Company.

{ CORPORATE OR COMMON SEAL OF THE COMPANY. } Attest: JOSEPH B. STEWART, *Secretary W., A. and G. R. R. Co.*

Signed, sealed, and delivered in presents of us by the said party of the first part, first having been duly stamped.
JOHN STONE.
W. V. MONTGOMERY.

OSCAR A. STEVENS. [L. S.]
W. JACKSON PHELPS. [L. S.]

Signed, sealed, and delivered in presents of us by the said parties of the second part, first having been properly stamped.
W. V. MONTGOMERY.
JOHN STONE.

The foregoing indenture of lease having been duly executed and signed by the president and secretary of this company, and the corporate seal of the company being attached thereto, and the said lessees having also affixed their hands and seals thereto, the same, as
46 executed, is now submitted for the further consideration and approval of the board of directors of this company; and it is now ordered and

Resolved. That the execution of said lease be, and the same is hereby, approved. In testimony whereof the corporate seal of this company is hereunto attached; and this resolution of approval is ordered to be copied into the record-book of this company.

{ CORPORATE OR COMMON SEAL OF THE COMPANY. }

R. W. LATHAM,
JOS. B. STEWART,
F. P. STANTON,
S. M. SHOEMAKER,
L. HUYCK,
Directors W., A. & G. R. R. Company.

47 Also acts of the Virginia legislature as to incorporation of corporations.
Also acts of Congress, and deed of trust from Lenox to Stewart.

Evidence was introduced by the defendant tending to show that the said regulation of seperating white from colored persons was one which was in force on the principal railroads in the country, and prevented on the Baltimore and Ohio R. R. not only colored persons from entering cars assigned to white persons, but also prevented white persons from entering cars assigned to colored persons; that unless the said regulation had been adopted by the road of the defendant the travel of the road would have been seriously injured by the falling off of public travel over its line, and that the establishment of such a regulation itself increased the expenses of the road considerably, and without such a regulation the receipts of the road would have decre'sed.

That evidence was given by the plaintiff tending to show that
48 on the Baltimore and Ohio Railroad there is, on the general or through trains, no distinction made in regard to the cars in which white and colored persons shall ride, but that on the local trains, at the request of certain colored persons, a car had been set apart for colored people, though they are not compelled to ride therein, and can ride in the other cars if they choose. And evidence was also given by colored persons that they have ridden over the B. & O. R. R. in the car with white people without molestation, and that when they have ridden in the car called the colored car on the local train, white people have also ridden therein.

And evidence was further given tending to show that Oscar A. Stevens was working the road under J. H. Lathrop, receiver, as superintendant for this end of the line, that is within the District of Columbia, and was one of the lessees of the road on the south side of the river, but was superintending the operations of the road at both ends,
49 and managed the entire road as one of the lessees, and as superintendent under Lathrop, receiver, of this end.

The receipts and expenses of the whole line were equally divided between the receiver and the lessees.

Whereupon the plaintiff asked the court to instruct the jury as follows:

First. If the jury find, from the evidence, that the plaintiff purchased a ticket over the road of the defendant from Washington to Alexandria and to return to Washington, and that while peaceably on, or about to enter, the car of said road, under said contract, she was expelled therefrom by the agent or employee of the defendant, she is entitled to recover the damages which resulted therefrom.

Second. If the jury find for the plaintiff they will find a sufficient amount to compensate her for all her injuries by reason of her expulsion, including loss of time, pain of body and mind, expenses of employing a physician, nursing and attendance.

50 To each and all of which the defendant objected; but the court overruled the objections of the defendant, and granted the same; to which rullings the defendant severally excepted, and prays the same advantage as if it had had several and seperate bills of exception signed and sealed.

And thereupon also the defendant prayed the court to instruct the jury as follows:

1st. If the jury find, from the evidence, that the Washington, Alexandria, & Georgetown Railroad Company executed the lease to Stephens and Phelps bearing date the day of , A. D. , offered in evidence in this case and placed the said lessees in possession of the road, property, and cars of said corporation, and that said road was, at the time the assault and injuries mentioned in the declaration were inflicted on

the plaintiff, in the exclusive possession and control of said lessees, and of the cars from which it is alleged the said plaintiff was ejected,
51 and were operating said road as lessees, then the plaintiff is not entitled to recover.

2nd. That if the jury find, from the evidence, that the assault and injuries complained of and set forth in the declaration in this case, were inflicted upon the plaintiff after the passing of the decree of the day of , A.D. , offered in evidence in this case, and after the receiver, appointed under the same, had taken possession of the property, cars, office, and road of the said defendant, and whilst he was still in possession of the same, and operating and conducting said road, under the authority of said decree, then plaintiff is not entitled to recover.

3rd. If the jury find, from the evidence, that at the time the alleged assault and injuries, set forth in the declaration, were inflicted on the plaintiff, the Washington, Alexandria, and Georgetown Railroad Company was enjoined from interfering with or operating its said road, and that at said time said road and the property of said company was in
52 possession of a receiver under a decree of this court, then plaintiff is not entitled to recover.

4th. If the jury find, from the evidence, that the persons managing the road belonging to the defendant, at the time the alleged assault and injuries were inflicted upon the plaintiff, had provided ample and suitable accommodations for passengers, and that they had, at said time, in accordance with a regulation established by them, set apart and designated one car for persons of color, and a seperate and different car for white persons, and had established the further regulation that persons of color should not be admitted into the car set apart for white persons, nor white persons admitted into the car set apart for colored persons, and that the plaintiff is a colored person, and when attempting to enter the car set apart for white persons, was informed that she could not ride in that car, but must take a certain other car appropriated to per-
53 sons of color, in the same train, to which she was then directed; and should also find that said car to which said plaintiff was so directed, was equally good, safe, cleanly, and comfortable with the car said plaintiff was told she could not enter, and in all respects equal to that car; and should also find that, upon being so informed and directed as aforesaid, the said plaintiff persisted in entering said car against the remonstrances of an officer whose duty it was to direct passengers to the cars appropriated for them, and that said plaintiff further attempted to enter said car by force, and was resisted by said officer, and forcibly removed from the platform of said car; and should further find that said plaintiff did afterwards enter the car to which she had been directed and which was assigned to colored persons, and found a seat therein, and was therein safely brought to the end of her journey, then plaintiff is not entitled to recover, provided the jury further find
54 that, in preventing the plaintiff from entering the said car, the said officer used no more force than was necessary to overcome the force used by the plaintiff in her efforts to enter said car.

Five (should be conclusion to prayer four.) And provided the jury further find that such regulation of the persons managing the said road, providing that seperate cars should be provided for white and colored persons, and that neither should be allowed to occupy seats in the car provided for the other, was a reasonable regulation.

Six. The receiver of the Washington, Alexandria and Georgetown Railroad Company, by Sam'l Phillips and R. T. Merrick, his counsel and attorneys, move the court to instruct the jury that on the evidence

produced in this cause there has not been due service of process on defendant, and that plaintiff cannot recover.

Seven. The receiver of the Washington, Alexandria and Georgetown Railroad Company, by Sam'l Phillips and R. T. Merrick, his
55 att'ys and counsel, moves the court to quash the return of the marshal in this case, it appearing from all the evidence that the original process was not served on the defendant.

Seventh. If the jury find, from the evidence, that the persons employed in managing the road of the defendant instructed their servents at the depot in Alexandria to designate to persons entering the cars the particular car in which they should take passage; and also instructed him that he should indicate to white persons the car appropriated to them and to colored persons the car appropriated to them, and that neither should occupy seats in the car of the other; but did not direct him to use force to compell a compliance with the regulations assigning distinct cars to the seperate races; and should further find that said servant, after indicating to the plaintiff the car designed for colored persons, and informing her that she was not allowed to ride in the car designed for white persons, and she insisted upon entering said
56 car, and that he thereupon forcibly resisted her in doing so, and forcibly ejected her from the platform of said car, then the defendant is not responsible for such assault nor the injuries thereby sustained.

Eighth. If the jury find there was an assault committed on the plaintiff and injuries sustained thereby, the defendant is not responsiable therefor unless they further find that such assault was committed by defendant's agent or servent, under instructions to use force under the circumstances under which said assault was committed.

Ninth. If the jury find, from the evidence, that the persons managing the road belonging to the defendand at the time the alleged assault and injuries were inflicted upon the plaintiff had provided ample and suitable accommodations for passengers, and that they had at said time, in accordance with a regulation established by them, set apart and designated one car for persons of color and a seperate and different car for
57 white persons, and had established the further regulation that persons of color should not be admitted into the car set apart for white persons, nor white persons admitted into the car set apart for colored persons; and further, that the said persons managing the said road found it necessary, to accommodate the public travel, that there should be these different cars with the above regulation, otherwise the travel and profits of the said road would be seriously diminished; and further, that the above regulation considerably increased the actual expense of running said road; and further, that in the entire section of the country in which said road is located that it is a custom among all railroads to have such a regulation, and which is generally acquiesced in on the part of the public; and that the plaintiff is a colored person, and when attempting to enter the car set apart for white
58 persons was informed that she could not ride in that car, but must take a certain other car appropriated to persons of color in the same train, and should also find that said car to which said plaintiff was directed was equally good, cleanly, safe, and comfortable with the car the said plaintiff was told she could not enter, and in all respects equal to that car, and should also find that, upon being so informed and directed as aforesaid, the said plaintiff persisted in entering said car, against the remonstrances of an officer whose duty it was to direct passengers to the cars appropriated for them; and that said

plaintiff further attempted to enter said car by force and was resisted by said officer and forcibly removed from the platform of said car, but that the said officer in said resistance and removal used no more force than was necessary; and should further find that said plaintiff did afterwards enter the car to which she had been directed and
59 which was assigned to colored persons and found a seat therein, and was therein safely brought to the end of her journey, then the plaintiff is not entitled to recover.

Tenth. If the jury find from the evidence that the assault complained of in the declaration was committed by the servants of the lessees, Stevens and Phelps, operating that part of the road within the State of Virginia, and not under the control or possession of the receiver appointed by the supreme court of District of Columbia, and not under his operation, that then the plaintiff is not entitled to recover.

Eleventh. That, on the whole evidence aforesaid, the plaintiff is not entitled to recover in this action against the defendant.

Twelfth. The counsel for the receiver further pray the court to instruct the jury that, notwithstanding the defendant had no right to eject the plaintiff from their car as aforesaid, yet, if they shall
60 find from the evidence aforesaid that the said officer, Robert Meed, first requested the said plaintiff not to enter the said car, and forbid her so doing, that then it was the duty of the plaintiff not to have forcibly and violently attempted to enter the said car; and if they shall further find that, notwithstanding the said protestation, the plaintiff did forcibly and violently attempt to enter the said car, and the said officer resisted her force in attempting to enter said car, using no more force and violence than was necessary to resist her entering, and the injuries of the plaintiff arose exclusively from the plaintiff attempting to enter by force the said car, that then the plaintiff is not entitled to recover any damages by reason of her injuries sustained in her attempting forcibly and violently to enter the said car.

But the court refused to give either or any one of said prayers; to which several rulings thereupon the defendants severrally ex-
61 cepted and prays the same advantage as if several and seperate bills of exception were signed and sealed. And all of which is allowed, and signed and sealed this 23rd day of April, 1870.

D. K. CARTTER, [SEAL.]
Chief Justice.

Amendment to bill of exceptions.—Filed Nov. 30, 1870.

It is hereby stipulated and agreed by and between the attorneys of the respective parties that the bill of exceptions in the above case be, and the same is hereby, amended by adding thereto the following, viz:

Evidence was given on the part of the plaintiff that the whole of said railroad between Washington and Alexandria was run and operated on the joint account of the lessees on the Virginia side and the receiver on the District side of the Potomac, and that the ticket purchased by the plaintiff at the joint and common office of the receiver and lessees
62 in the District was what is called a "round trip" ticket, and that all tickets were issued and sold at both ends of the rout', in the name of the "Washington, Alexandria and Georgetown R. R. Co.;"

and no tickets distinguished as first or second class tickets were issued, all tickets being and reading alike.

MERRICK & PHILLIPS,
Att'ys for Defendant.
BURGESS & BOND AND W'M A. COOK,
Pl'ffs Att'ys.

Proceedings in general term.

Proceedings before the supreme court of the District of Columbia, in general term, commencing Tuesday, January 3rd, 1871.

TUESDAY, *January* 3, 1871.

Term commenced by proclimation of the marshal, by order of court—present, Chief Justice Cartter, and Justices Olin, Wylie, and McArthur.

SATURDAY, *February* 11, 1871.

63 Session resumed pursuant to adjournment—present, Chief Justice Cartter, and Justices Olin, Wylie, Humphreys, and McArthur.

CATHARINE BROWN, PL'FF,
v.
THE WASHINGTON, ALEXANDRIA AND GEORGETOWN Railroad Co., def't. } At law. No. 4582.

And now again come here as well the plaintiff as the defendant, by their respective attorneys aforesaid, and thereupon, because it seems to the court that there is no error in the record and procedings of the circuit court, therefore it is considered that the defendant's motion for a new trial be, and the same is hereby, overruled, and that the plaintiff recover against the defendant her damages aforesaid of fifteen hundred dollars in manner and form aforesaid found, and $ for her costs of suit, and that she have execution thereof.

64 In the supreme court of the district of Columbia, the day of , 18 .

CATHARINE BROWN, PLAINTIFF,
vs.
WASHINGTON, ALEXANDRIA & GEORGETOWN R. R. Co., def't. } At law. No. . In error.

Know all men by these presents that we, The Washington, Alexandria & Georgetown Railroad Company & Horatio R. Riddle, are bound unto the above-named Catharine Brown, in the sum of thirty-five hundred dollars, to be paid to the said plaintiff, her executors, or administrators; to which payment well, and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 15th day of February, 18 1871.

Whereas the above-named Washington, Alexandria & Georgetown Railroad Company hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Washington, Alexandria & Georgetown R. R. Co., shall prosecute its said writ of error to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

H. R. RIDDLE. [SEAL.]
[SEAL.]

Sealed and delivered in presence of—
THEO. M. DANY.

Approved.

D. K. CARTTER,
Chief Justice.

I consider this bond good & ample security for the penalty. Mr. Riddle is a gentleman of large estate, real & personal, as I well know.

R. J. BRENT.

65 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Catharine Brown, plaintiff, and The Washington, Alexandria & Georgetown Railroad Company, defendant, (at law, No. 4582,) a manifest error hath happened to the great damage of the said defendant, as by its complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; therefore you are commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States, this 13th day of February, in the year of our Lord 1871, and of the independence of the United States the 95th.

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To the plaintiff in the above-entitled cause:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein The Washington, Alexandria & Georgetown Railroad Compnny is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER,
Ch'f Justice.

We acknowledge service of this citation, Feb'y 13, 1871.

GEO. BURGESS,
Of Counsel for Defendant in Error.

66 OFFICE OF THE CLERK OF THE
SUPREME COURT OF THE DISTRICT OF COLUMBIA,
December 4, 1871.

I certify that the foregoing is truly copied from originals on file and of record in this office; which originals together constitute the record and proceedings of the said supreme court of the District of Columbia, in the case mentioned in the writ of error to which this certificate is annexed.

Witness my hand and the seal of said court the day and year aforesaid.

R. J. MEIGS. [SEAL.]

(Indorsement on cover:) No. 501. The Washington, Alexandria and Georgetown Railroad Company, plaintiff in error, vs. Catharine Brown. Dist. of Columbia sup. court. Filed 8th December, 1871.

REC. 501—3

No.

IN THE

Supreme Court of the United States,

THE WASHINGTON, ALEXANDRIA AND GEORGETOWN RAIL ROAD CO., PLAINTIFF IN ERROR.

vs.

CATHERINE BROWN, DEFENDANT.

Brief for Plaintiff in Error.

T. T. CRITTENDEN,
D. CLARKE. } *Counsel.*

In the Supreme Court of the UNITED STATES.

THE WASHINGTON, ALEXANDRIA AND GEORGETOWN R. R. Co., *Plaintiff in Error.*

vs.

CATHERINE BROWN, *Defendant.*

No. 55.

BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

The declaration was filed in this cause on the 4th of March, 1868, in the Supreme Court of the District of Columbia, by Catharine Brown against the W. A. & G. R. R. Co. in which it was averred that said defendant is a corporation duly organized under the laws of Virginia and the United States, and doing business in said District and in Virginia as far as Alexandria as common carriers of passengers by rail road for hire. That on the 8th of February, 1868, said plaintiff, Brown, bought a round trip ticket on said road from Washington to Alexandria and return—she then went to Alexandria and attempting to return from Alexandria took her seat in a car on said road, and while in said car at Alexandria she was, without lawful cause, with force and violence assaulted and ejected from the car by the defendant and that said defendant refused to carry her on said car over said road. That by reason of said violent treatment

she was compelled to employ a physician and remain under treatment, &c., to the damage of the plaintiff of $20,000. Rec. pp. 1 and 2.

Summons was served on John Stone, clerk for J. H. Lathrop, receiver of the company appointed by the Court, &c.; also on J. B. Stewart, reputed to be one of the directors, &c. Rec. p. 3.

No appearance entered by defendant, judgment by default—motion to set aside said judgment for want of sufficient service, and order of the Court that the receiver, Lathrop, do cause his appearance on behalf of defendant to be entered within ten days. Rec. pp. 3 and 4.

Plea, not guilty, filed by receiver. Rec. p. 5.

Evidence.

The bill of exceptions contains only a brief statement of the evidence. It shows that the plaintiff on the 8th of February, 1868, purchased at Washington a "round trip" ticket on the W. A. and G. R. R. for twenty-five cents—that she went to Alexandria on that day, and on the same day entered the last car of the train at Alexandria on the defendant's road to return to Washington; that plaintiff is a woman of color; that after she had entered the car a man stationed at the depot whose duty it was to direct passengers to cars and see they entered therein, and who was employed by Stephens and Phelps, lessees of said road within the State of Virginia, and paid jointly by lessees and the receiver; that the said lessees also acted as superintendent and manager within the District of Columbia, under appointment from J. D. Lathrop, the receiver of said road within the said district; that the said man stationed as aforesaid to direct passengers, informed the plaintiff she could not ride in that car, but she should take the forward car; that he had been instructed by the persons in

charge of the road not to permit colored persons to ride in that car, but that there was another car for them; that the plaintiff refused to leave the car she had entered, whereupon the man attempted to put her out by great force and violence, with insults and indignities; and on the part of the defendant evidence was given tending to show that no more force was used than sufficient to put her out, and no unnecessary violence or force was used and no insults or indignities were offered the plaintiff that the said man finally, after calling assistance, succeeded in putting the plaintiff off the car. That plaintiff afterwards, with the assistance of a friend who approached her, entered another car on the same train, and was safely carried to Washington. That there were three cars on said trains, all made at the same time, substantially alike and equally safe and comfortable, but evidence on the part of the plaintiff was offered tending to show that in the car she was compelled to ride there was smoking and spitting, and was not as clean or comfortable to her. There was a regulation, that the first car going from Washington to Alexandria was used for colored persons, and the last car for white ladies, as aforesaid. When in returning to Washington from Alexandria, the first car going down carrying colored persons became the last car coming up, and was used for white ladies; and the last car going to Alexandria carrying white ladies became the first car coming back, and was used for colored persons.

That the portion of said rail road within the District of Columbia was in the possession and under the control of J. H. Lathrop, Esq., a receiver appointed by the Supreme Court of the District of Columbia, in equity causes Nos. 757 and 773, wherein Davison et al were complainants, and the Washington, Alexandria and Georgetown Rail Road Company were defendants. Rec. p. 9. The lease is inserted Rec. p. 10.

10 St p 810

Assignment of Errors.

Under the exceptions taken in this cause by the defendant, the following points are assigned as errors, viz: the rulings of the court as to

1. The sufficiency of the service of the summons upon the clerk of the receiver and lessees.

2. The liability of the defendant for the acts of the lessees and receiver.

3. The regulation of the defendant separating the colored from the white passengers; the right of the defendant to make it and its reasonableness.

1. By the act of Congress, 12 U. S. stat., sect. 6, p. 763, the Supreme Court of the District of Columbia in general term were empowered to "establish such other rules as it may deem necessary for the regulation of the practice of the several courts organized by this act, &c." By the printed Rules of practice adopted in pursuance of this act, p. 7, rule 21, it is provided that "every writ issued out of the clerk's office to require the defendant's appearance to answer to an action shall be accompanied with a copy of the declaration and of the notice thereto subscribed; and the defendant shall be served with said copies and the marshal's return shall show the fact." The record shows that the officers of the company resided in the district and service should have been made upon them.

2. As to the liability of the defendant for the acts of the lessees and receiver, the record p. 9 shows, that the receiver was appointed for that part of the road lying in the District of Columbia, and that the part of the road situate in Virginia, was in the possession of the lessees.

The lessees were never served with process, and the

receiver was without power to bind the corporation except as to that part of the road which was within the limits of the jurisdiction of the Court. The act for which this suit was brought was done in Alexandria in the State of Virginia.

Blackwell vs. Wiswell, 24 Barb., 355.

3. "As to the regulation of the defendant separating the colored from the white passengers, the right of the defendant to make it and its reasonableness."

The cause of action occurred on the 24th of February, 1868, anterior to the adoption of the 14th and 15th amendments to the Constitution of the United States.

By the act of Congress of March 3, 1863, 12 stat. at large, p. 805, the Alexandria and Washington R. R. Co. were granted a license to extend their road from the south side of the Potomac through Washington City to the depot of the Baltimore and Ohio R. R. The last clause of the first section of this act provides as follows, "that no person shall be excluded from the cars on account of color."

This act was passed before the adoption of the 13th, 14th and 15th amendments to the Constitution of the United States. It was valid only within the District of Columbia and not within the State of Virginia.

By the act of Congress of July 25, 1866, 14 stat. at large, 248, the defendant was recognized as the successor of the Alexandria and Washington R. R. company and received a similar license to connect with the Washington branch of the Baltimore and Ohio R. R., but in this act there is no provision as to the exclusion of colored persons.

The act of Congress of April 9, 1866, 14 stat. at large, p. 27, is not infringed by the action of the defendant in making and enforcing the separation of races in its cars.

The same regulation was at and before that time made

by other rail roads, and in several states the courts have decided that such regulation was reasonable and legal.

Angell and Ames on corporations, sect. 349.

Vedder vs. Fellows, 20 New York Rep. 126.

Westchester and Phil. R. R. Co. vs. Mils, 5 P. F. Smith's (Penn. Rep.) 209.

Baltimore and Ohio R. R. Co. vs. Blocher, 27 Md. Rep., 277.

T. T. CRITTENDEN,
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IN THE

Supreme Court of the United States.

No. 55.

THE WASHINGTON, ALEXANDRIA AND GEORGETOWN RAILROAD CO.

PLAINTIFF IN ERROR,

vs.

CATHARINE BROWN,

DEFENDANT.

BRIEF FOR DEFENDANT IN ERROR.

WILLIAM A. COOK,
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Counsel.

WASHINGTON, D. C.
GIBSON BROTHERS, PRINTERS.
1873.

In the Supreme Court of the United States.

THE WASHINGTON, ALEXANDRIA & GEORGETOWN RAILROAD COMPANY, PLAINTIFF IN ERROR,
vs.
CATHARINE BROWN, DEFENDANT.

No. 55.

Brief for Defendant in Error.

STATEMENT.

The facts derived from the evidence are, briefly, as follows:

The defendant in error, Catharine Brown, on the 8th of February, 1868, purchased, at the office of the plaintiff in error in the city of Washington, a ticket called a round-trip ticket, entitling her to ride on the road of plaintiff in error to Alexandria, Va., and thence back to Washington.

Having ridden thus to Alexandria, and retaining in her possession the portion of the ticket entitling her to return to Washington, she entered a car of the road, when she was violently ejected by a person employed by the lessees of that part of the line lying in the State of Virginia, and paid jointly by them and the receiver of that part of the line lying in the District of Columbia. It seems there was a regulation of the road assigning a certain car for colored persons and a certain other car for white ladies and gentlemen, which regulation the said employé was instructed to enforce; although there is no evidence that this

regulation was publicly promulgated or in any way brought to the knowledge of defendant in error, at or before the time she purchased her ticket, nor until after she had entered the car at Alexandria to return to Washington.

The fact that she was colored was the only reason alleged for ejecting her from the car she had entered. The employé treated her with insults and indignities, declaring that "no damned nigger should ride in that car," &c., and wrenched her wrist, struck her over the eye, kicked her, and dragged her down on the pavement and left her there.

The portion of the road lying in the District of Columbia was in the hands of a receiver appointed by the court in suits wherein the Washington, Alexandria & Georgetown Railroad Co. was a party, and the lessees of that part of the line lying in Virginia also acted as superintendent and manager of that part of the line lying in the District of Columbia, under an appointment from the receiver. The entire line was in fact operated under a common management and for a common profit; on the joint account of the receiver and lessees.

The defendant in error purchased her ticket at the joint and common office of the receiver and lessees located in the District of Columbia; and all tickets were issued and sold at both ends of the route in the name of "The Washington, Alexandria & Georgetown R.R. Co.," and no tickets distinguished as first or second-class tickets were issued or sold, all tickets being exactly alike.

See amendment to bill of exceptions, p. 18 of the record.

INSTRUCTIONS OF THE COURT, ETC.

The court instructed the jury:

1. That if they should find from the evidence that the plaintiff purchased a ticket over the road of the defendant

from Washington to Alexandria and to return to Washington, and that while peaceably on, or about to enter, the car of said road under said contract, she was expelled therefrom by the agent or employé of the defendant, she is entitled to recover the damages which resulted therefrom.

2. That if the jury find for plaintiff they will find a sufficient amount to compensate her for all her injuries by reason of her expulsion, including loss of time, pain of body and mind, expenses of employing a physician, nursing and attendance.

The plaintiff in error complained of the refusal of the court to quash the marshal's return of service, of the foregoing instructions, and of the refusal of the court to grant certain prayers in its behalf, based, essentially, upon the right of the said railroad company to exclude or expel colored persons from its cars, or at least from some of them, on the sole ground of color, and of certain other prayers based on the assumption that the fact of the road's being operated by lessees and a receiver relieved the company from liability.

Points and Authorities.

I.

AS TO THE SERVICE OF PROCESS.

a.

The act of Congress of August 3, 1854, incorporating the Alexandria & Washington R.R. Co. within the District of Columbia, provides "that service of process against said company may be made on the president or any director of the company, or on the chief clerk in attendance at the office of the company."

10 Stat. at Large, p. 810, sec. 3.

The act of July 25, 1866, refers to the Washington, Alexandria & Georgetown R.R. Co. as a corporation lawfully succeeding to the charter, rights, and privileges of the Alexandria and Washington R.R. Co., and authorizes it to extend its road through certain streets, &c.

14 Stat. at Large, p. 248.

Service was in accordance with the act first above cited. It was made on the chief clerk in attendance at the office of the company. The road was run and operated by the receiver and lessees, and their office was, *ex necessitate*, the office of the company.

Service was also made on Joseph B. Stewart, reputed to be one of the directors of the company, as per marshal's return, and whom the record, p. 14, shows to have been both secretary and director.

Service was also made on Oscar A. Stevens, one of the lessees, and superintendent or manager of the whole line.

b.

The act of Congress of February 22, 1867, section 11, provides that in actions against foreign corporations process may served on the agent of such corporation or person conducting its business, or in case he cannot be found, by leaving a copy thereof at the principal place of business in the District.

14 Stat. at Large, p. 403.

As to the corporation in Virginia, this statute was complied with, as is shown by the marshal's return.

If an officer's return can be faily construed to be sufficient in law, it must be so construed.

Coggswell *vs.* Warren, 1 Curt., 223.

c.

The object of service of process is to acquire jurisdiction over the person of the defendant; and, therefore, even if service were defective, it is cured by the voluntary appearance of the defendant in every stage of the case up to the present.

II.

AS TO LIABILITY OF THE DEFENDANT FOR THE ACTS OF THE LESSEES AND RECEIVERS.

As to lessees. Chartered rights and privileges are coupled with duties and liabilities which cannot be evaded by leasing the granted franchise. The lessees become but agents of the company.

This question has been so often adjudicated that a reference to a few of the authorities is deemed sufficient.

Clements *vs.* Canfield, 28 Vt., 303.

Ingersoll *vs.* Stockbridge & Pittsfield R.R. Co., 8 Allen, 438.

Langley *vs.* The Boston & Maine R.R. Co., 10 Gray, 103.

The Ohio & Miss. R.R. Co. *vs.* Dunbar *et al.*, 20 Ill., 623.

The York & Md. Line R.R. Co. *vs.* Ross Winans, 17 Howard, 30.

b.

As to the receiver. The appointment of a receiver does not relieve the company from liability.

Redfield on Railroads, vol. 2, p. 510, (3d ed.,) note 12, and cases cited.

The Ohio and Miss. R.R. Co. *vs.* Fitch, 20 Indiana, 498.

McKinney *vs.* The Ohio & Miss. R.R. Co., 22 Indiana, 99.

The order of court for the receiver to appear was leave of court for the prosecution of the suit while the receiver. ship existed.

III.

The remaining point is the attempted justification of the acts complained of by reason of a regulation of the road excluding colored persons from some of its cars solely on account of their color.

a.

The company was a common carrier, and as such, by the unconditional sale of a round-trip ticket, accepted the defendant in error as a passenger, and contracted to safely

carry her to Alexandria and back to Washington with all the rights and privileges of any other passenger, without any reservation as to the car in which she should ride. It was the same kind of a ticket as was sold to all, and no notice was made public or brought home to her of any such reservation or regulation at the time the contract was entered into, and this contract was half performed when the acts complained of occurred.

b.

The act of Congress of March 3, 1863, (12 Stat. at Large, p. 805,) provides that no person shall be excluded from the cars of the Alexandria & Washington railroad on account of color.

The act of July 25, 1866, (14 Stat. at Large, p. 248,) recognizes the plaintiff in error as the successor of the Alexandria and Washington railroad, and extends certain privileges, but repeals nothing, and leaves all the provisions of the former act in full force.

We have also the acts of July 1, 1864, and March 3, 1865, incorporating the Metropolitan Railroad Company, and providing that upon any railroad in the District of Columbia there shall be no exclusion from *any* of the cars on account of color.

13 Stat. at Large, p. 328, sec. 14.
" " 537, sec. 5.

c.

It may be claimed that the provision in the charter of this company, the plaintiff in error, was only valid within the District of Columbia, and had no force in Virginia. But this was a consolidated line and was operated jointly, and the company here was liable for a breach of contract entered into here, or a tort growing out of such breach, on

the part of the agents or servants of that part of the line lying in Virginia.

The company could not make a contract in the District which would allow, in the carrying of passengers, any exclusion on account of color, and the contract must be construed by the law existing at the place where it was made. In fact, the company enjoyed its privilege of extending its line within this District subject to the condition that there should be no exclusion on account of color.

Redfield on Railroads, (3d ed.,) vol. 2, p. 228.

Redfield's Am. Railway Cases, p. 421.

The York & Md. Line R.R. Co. *vs.* Ross Winans, 17 Howard, 30.

The Great Western Railway Co. *vs.* Blake, 7 Hurl. and Norman's Exchequer Rep., 987.

Buxton *vs.* N. E. Railway Co., 3 Queen's Bench Law Report, 552, approving the case last cited.

d.

But further, the acts complained of were committed by the servant as much of this as of the other end of the route, employed by the superintendent of both, acting for both, and paid by both jointly, (record, p. 8,) and both are alike responsible for his acts.

As to liability for acts of servants—

Moore *vs.* The Fitchburg R.R. Co., 4 Gray, 465.

The Phila. & Reading R.R. Co. *vs.* Derby, 14 Howard, 464.

e.

With the accession of colored people to the rights of citizens, by virtue of the act of Congress of April 9, 1866, called the "civil-rights bill," (14 Stat. at Large, p. 37,) as well as by reason of the change in their condition wrought

by the struggle that happily had ended years before this cause of action accrued, the regulation and acts complained of were in derogation of their common rights of citizenship, unjust, and illegal.

In the case of the Westchester and Phila. R.R. Co. *vs.* Mils, (55 Penn. Rep.,) the decision rested largely upon the fact that colored people were never recognized by the constitution or laws of that State as citizens. Soon after the occurrence out of which that suit arose the legislature remedied the law, as we claim that Congress did by the act of April 9, 1866, by declaring colored persons citizens.

f.

Besides, it may now well be maintained that the regulation never had any true foundation in law and cannot now be justified.

g.

If the right to make such a regulation should be sustained, yet the company is liable for the wanton and violent manner in which it was enforced by its employee.

State *vs.* Ross, 2 Dutcher, 224.

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